IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 1071 of 2001
(Old No. 238/1981)

1. Narain Singh (dead)
2. Aan Singh
3. Jai Bhan Singh
   All S/o Ganga Singh,
   R/o Village Targoli, P.S. Bhautarh,
   District Pithoragarh …….. Appellants

Versus

State of U.P. …….. Respondent

Ms. Seema Sirohi, learned Advocate for the appellants.
Learned Government Advocate for the State.

Hon. P.C. Verma, A.C.J.
Hon. Rajesh Tandon, J.

Heard Ms. Seema Sirohi, learned Advocate for the appellants and learned Government Advocate.

According to the report of Chief Judicial Magistrate, Pithoragarh dated 28.8.2003, it has come to our knowledge that appellant No. 1 namely Narain Singh has died. Therefore, now the appeal only survives on behalf of appellants No. 2 & 3.

Brief facts of this case are that on 27th March, 1979 at about 9:00 p.m. in Village Turgoli, Patti Bhantar, District Pithoragarh, the accused, in their common intention, committed the murder of Prem Singh and inflicted injuries on Diwan Singh while attempting to commit his murder.

The learned Session's Judge has convicted Narain Singh (now dead) for an offence under Section 302 I.P.C. for causing murder of deceased Prem Singh. The accused Aan Singh and Jai Bhan Singh have not been found guilty of the offence under Section 302/34 I.P.C., but they have been found guilty of offence under Section 326 read with Section 34 I.P.C. for the injuries inflicted upon the deceased Prem Singh. Both these appellants No. 2 & 3 have also been found guilty of the offence under Section 324 read with Section 34 I.P.C. for the injuries on the person of Diwan Singh.

The ground of conviction is the statement of the injured Shri Diwan Singh, PW3. Diwan Singh, PW3 has stated in his statement that he received injuries on his hand, behind his head, behind his ear and also on his right hand. He has not said as to who inflicted the injuries on him. He only said that all the four persons attacked on him and after receipt of the injuries, he fell down and became unconscious. Diwan Singh, PW3 has not stated that the appellants namely Aan Singh inflicted injuries by *Lathi*.

While the question under section 313 was put to him in question No. 6, it was specifically asked that Aan Singh came out to attack with *Lathi.* Injury report of Diwan Singh shows that he has received injuries by *Lathi* and sharp aged weapon both. From the statement of Diwan Singh, PW3, it does not come out as to what were the weapons in the hands of the appellants. None of the prosecution witness has stated that the appellants namely Aan Singh and Jaibhan Singh have any sharp-aged weapon. Therefore, injuries received by Diwan Singh, PW3 through sharp-aged weapon cannot be said to have been inflicted by the appellants. Blunt injuries have been found in the injury report of Diwan Singh, therefore, a caase under section 323 is made out clearly.

According to the injury report, injuries were found on Diwan Singh which are as follows:

(i) Incised wound (bleeding) 8 cm x 0.5 cm x muscle deep on the left side of forehead extending from upper lid of left eye to head (wound is stitched and well dressed).

(ii) Contused swelling (Red) 4 cm x 4 cm on the upper and lower lids of left eye with sub conjunctive haemorrhage of the left eye.

(iii) Lacerated wound 3 cm X 0.3 cm x muscle deep on the right martoid region behind the right ext. ear (wound is stitched and well dressed).

(iv) Abrasion (brown red) 3 cm x 1.5 cm on the back aspect of the head.

(v) Lacerated wound 2 cm x 0.5 cm x muscle deep on the front aspect of right arm 2 inches down the right elbow joint. (well dressed).

These injuries could be caused by blunt weapon like *Lathi*. Therefore, the appellants could not have been convicted for offence under section 326 read with section 34 I.P.C. as the fourth accused namely Pratap Singh has already been acquitted by the Trial Court.

Therefore, in our opinion, the offence under section 323 I.P.C. is made out. Ends of justice would be met if the appellants are punished for a period for which they have served in jail and they are imposed a fine of Rs. 1,000/- each. A sum of Rs. 2,000/- shall be paid to the injured Diwan Singh.

Therefore, we partly allow the appeal and modify the sentence to the extent that the appellants are punished for an offence under section 323 I.P.C. for the period they remained in jail and a sum of Rs. 1,000/- as fine on each of the appellants. Their sureties shall be discharged only after the payment of the fine to the injured Diwan Singh. Chief Judicial Magistrate shall ensure the compliance of the this order, copy of which shall be served upon him.

(Rajesh Tandon, J.) **(P.C. Verma, A.C.J.)**

Dt. 10.03.2004.
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